C.S. 100/—

SINGLE BENCH 5

IN THE HIGH COURT OF JUDICATURE, AT BILASPUR

(C.G.)

Writ Petition No. 3159 **/2006**

PETITIONER : Panchram S/o Sahas Ram Sahu (Sarpanch) aged about 64 years, cultivator and resident of village Semariya alliance to Gram-Panchyat-Bhinoda, Tahsil-Bilaigarh, Distt. Raipur (C.G.)

P.R.No. 3216/06 Santosh Sahu
Presented by
dated 29/6/06

VERSUS

RESPONDENTS

1. The State Of Chhattisgarh through the Secretary department of Panchayat and Social Welfare D.K. Bhawan Raipur Distt. Raipur.
2. The Collector Raipur District Raipur (C.G.)
3. Gram Panchayat Bhinoda Through The sarpanch, in the Janpad Panchayat and tahsil Bilaigarh Distt. Raipur (C.G.)
4. The Panchayat Sangthak (S.N. Shukla) Janpad Panchayat Bilaigarh Distt. Raipur
5. The Secretary Gram Panchayat Bhinoda Tahsil Bilaigarh Distt. Raipur (C.G.)
6. Smt. Nisha bai Satnami Panch of Gram Panchayat Bhinoda

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29/6/06

HIGH COMMISSIONER
ARCHANA
29/06/06

(6)

7. Samme Ram Sahu Panch of Gram Panchayat Bhinoda.

8. JitRam Sahu S/o Ram Sahu Panch of Gram Panchayat Bhinoda Tahsil Bilaigarh Distt. Raipur (C.G.)

9. The Naib Tahsildar Sub Tahsil Bhatgaon (Anupam Shukla) tahsil Bilaigarh Distt. Raipur C.G.

10. The Sub Divisional officer (Specified officer for the Panchayat Election) Bilaigarh tahsil Bilaigarh Distt. Raipur.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA. FOR ISSUE OF CERCIORARY MANDAMUS, PHOHIBITION ETC. OR ANY APPOPRITE WRIT DIRECTION OR ORDER

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A. F. R.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30.6.2006

Shri J.R. Verma, Advocate for the petitioner.

Shri N.K. Agarwal, Deputy Advocate General for respondent No.1 & 2.

By this petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 5.6.2006 passed by the Additional Collector, Baloda Bazar in the reference filed by the petitioner herein under Section 21 (4) of the C.G. Panchayat Raj Adhiniyam, 1993 (hereinafter shall be referred as 'the Adhiniyam, 1994') whereby the Additional Collector rejected the reference made by the petitioner against the order of Prescribed Authority dated 10.3.2006 holding that no confidence motion has been carried out against the petitioner herein.

Brief facts leading to filing of this writ petition are that the petitioner herein was the elected Sarpanch of Gram Panchayat Bhinoda, Bilaigarh, District Raipur. However, dissatisfied with the working of the petitioner herein, on 23.2.2006 the Up-Sarpanch and Panchas of Gram Panchayat Bhinoda gave notice of no confidence motion to the Prescribed Authority under Rule 3 (1) of the Chhattisgarh Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice President Ke Virudh Avishwas Prastav) Niyam, 1994 (hereinafter shall be referred as 'Rules of 1994'). The Prescribed Authority after satisfying himself about the admissibility of notice fixed the meeting for discussion on no confidence motion on 10.3.2006 at 12.00 noon in the building of Government Primary School, Bhinoda. As is evident from the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

order sheet, that as the Tehsildars were on strike, therefore, initially the Prescribed Authority appointed the Panchayat & Social Education Organizer, Bilaigarh to preside over the meeting, however, later on, on 9.3.2006, just one day before the date of meeting Naib Tehsildar Shri S.N. Shukla was appointed as the Presiding Officer to preside over the meeting. Accordingly, meeting was convened on 10.3.2006 as per notice and notice to that effect was sent to the Panchas and petitioner herein. In the said meeting all 12 members of the Gram Panchayat including the Sarpanch i.e. petitioner herein participated and as per proceedings (Annexure P-2) the Presiding Officer held that the resolution has been carried out. Aggrieved by that the petitioner herein made a reference under Section 21 (4) of the Adhiniyam, 1993 before the Additional Collector and the same was rejected by the Additional Collector vide impugned order.

I have heard Shri Verma, learned counsel for the petitioner and Shri Agarwal, Deputy Advocate General for respondent No.1 & 2 on admission of petition.

Shri Verma argued that the date of meeting fixed by the Prescribed Authority was beyond 15 days, which was contrary to sub-rule (3) of Rule 3 of Rules of 1994 and similarly, 3 days prior intimation to the Collector & Panchayat Secretary, as required under Rule 4 of Rules of 1994, was also not given by the Prescribed Authority. He also argued that the perusal of proceedings of meeting (Annexure P-2) prepared by the Presiding Officer i.e. Naib Tehsildar discloses that the Presiding Officer informed all the Panchas and the petitioner herein that who want to cast their votes in

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favour of the motion, they should indicate their intention by affixing the mark of (✓) on the ballot paper and the persons who want to cast their votes in favour of the motion, they should also indicate their intention by affixing the mark of (✗) on the ballot paper, therefore, by the said conduct the presiding officer has mislead the Panchas and they were not able to cast their votes according to their will, as out of total Panchas, six Panchas were illiterate.

On the other hand, Shri Agarwal supporting the order of Additional Collector argued that 15 days time is not mandatory and similarly, Rule 4 of Rules of 1994 is also not mandatory and about third point raised by learned counsel for the petitioner he submitted that the presiding officer appears to have committed mistake while recording the proceedings, in fact, the Panchas including the petitioner herein were rightly informed and apprised about the fact that how to indicate their intention regarding casting of votes in favour of motion and against the motion, as per Rule 5.

Having heard learned counsel for the parties, I have perused the record.

As far as first point raised by learned counsel for the petitioner that date of meeting fixed by the Prescribed Authority was beyond 15 days time is concerned, as per record, notice by the Panchas for no confidence motion was submitted on 23.2.2006 and meeting was fixed for 10.3.2006. Sub-rule (3) of Rule 3 of Rules of 1994 envisages that date of meeting shall not be more than fifteen days from the date of receipt of the said notice. Therefore, the time has to be counted from the date of notice and if the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

time is counted from the date of notice i.e. from 23.2.2006, then 10.3.2006 falls on the 16th day, as such the meeting was fixed one day beyond 15 days. Now the question for consideration of this Court is that whether on account of that proceedings can be held to be invalidated. A similar question came up for consideration before the Full Bench of M.P. High Court in the matter of **Bhulin Dewangan Vs. State of M.P. and others** reported in **2000 (2) JLJ 253** and in Para-15 of the judgment the Court held that "*the requirements or conditions, although mandatory, may be waived by the party, if no public interest is involved and in such a case the act done will be valid even if the requirements or conditions have not been performed*'. The Court further held that " *it would still be open to the Collector or this Court to find out whether in a given case non-compliance of any part of the rule has in fact resulted in any failure of justice or has caused any serious prejudice to any of the parties and the Court under Article 227 of the Constitution has also a discretion not to interfere even though a mandatory requirement of law has not been strictly complied with as thereby no serious prejudice or failure of justice has been caused*'. In the given case notices were issued, the petitioner herein along with other Panchas participated in the meeting, at the time of meeting no such objection was raised and in this petition even the point regarding non-compliance of sub-rule (3) of Rule 3 has been raised, but it has not been mentioned that on account of one day delay in convening the meeting the petitioner's right has been seriously prejudiced and if so, how

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the same is prejudiced. From perusal of the minutes of meeting it appears that the petitioner and other Panchas were given opportunity to raise their points and thereafter only motion was carried out. Therefore, looking to the facts of the case and also the fact that the petitioner has not raised any ground in the petition that his cause has been seriously prejudiced on account of one day delay in convening the meeting, I am of the opinion that on the ground that the meeting was convened one day beyond 15 days the whole proceedings cannot be invalidated. The spirit behind the Rules, 1994, is that a Sarpanch who is elected by villagers should continue on the said post so long he enjoys the confidence of public representatives i.e. Panchas and since the petitioner lost the confidence of the Panchas, therefore, they have resolved to remove him from the said post by 2/3rd majority of the Panchas present at the meeting.

As far as second ground raised by learned counsel for the petitioner that there is violation of Rule 4 of Rules of 1994, which requires that the prescribed authority, after appointment of the officer of the Government to preside over the meeting of Gram Panchayat, who shall not below the rank of Naib Tehsildar, to inform the Secretary of Gram Panchayat and the Collector about such appointment at least 3 days before the date fixed for meeting. As has been mentioned earlier that when the notice came for consideration before the Prescribed Authority the Tehsildars were on strike, therefore, initially the Prescribed Authority appointed the Panchayat & Social Organizer to preside over the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

meeting, however, later on, on 9.3.2006 when this fact was brought to his notice that a person not below the rank of Naib Tehsildar can preside over the meeting on 10.3.2006, on 9.3.2006 Shri S.N. Shukla, Naib Tehsildar was appointed as Presiding Officer to preside over the meeting. In the circumstances, when the presiding officer was legally appointed on 9.3.2006 itself, it was not possible to inform the Secretary and the Collector 3 days prior to the date of meeting. Perusal of Rule 4 shows that the intimation regarding appointment of presiding officer has to be given to the Secretary of Gram Panchayat because the Secretary is the officer who looks after the activities of Panchayat and who has to make all arrangements for the meeting and similarly, the Collector being the head of the district an intimation regarding such meeting has been considered appropriate.

Again the question to be considered as to whether on account of the fact mentioned above that the intimation could not be given 3 days prior to the date of meeting, no confidence motion can be held to be invalidated. As has been observed above in respect of sub-rule (3) of Rule 3, again the question will crop-up that whether on account of non-intimation to the Secretary & the Collector any serious prejudice has been caused to the petitioner. In the first instance, there is no such ground has been raised in the petition, moreover, nothing has come on record that on account of non-intimation prior to 3 days any confusion was created regarding the meeting or proper arrangements could not be made,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

therefore, for the above reasons, meeting cannot be held to be invalidated, as no serious prejudice has been caused to the petitioner on account of non-compliance of Rule 4 of Rules of 1994.

Now coming to third argument advanced by learned counsel for the petitioner that the requirement of sub-rule (5) of Rule 5 of Rules of 1994 is that "*the Presiding Officer shall call the members present in the meeting one by one and shall give them ballot papers duly signed by him to indicate its authenticity, to cast his vote for or against the motion. The member who wants to vote in favour of the motion shall affix the symbol of (✓) and the member who wants to vote against the motion shall affix the symbol of 'X'. After the member has recorded his vote, he shall fold the ballot paper to maintain secrecy and put it in the ballot box kept on the table of the Presiding Officer*".

Perusal of Page Nos.4 & 5 of the proceedings and Page Nos.33 & 34 of the Paper Book shows that in the proceedings it has been written that for the purpose of casting of vote he handed over the ballot papers signed by him to Panchas & Sarpanch and informed them that those who want to cast their votes in favour of motion, they should affix the mark of (✓) and again it has been written that those who want to cast their votes in favour of motion, they should affix the mark of 'X'. Thereafter, it has been written that after casting of total votes the ballot papers were taken out and it was found that on 9 ballot papers there is mark of (✓), whereas, on 3 ballot papers there was mark of 'X', as such, 9 votes were

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cast in favour of the motion and as there are 12 members of the Panchayat and 2/3rd members have cast their votes in favour of motion, therefore, the motion is declared as carried out.

Now the question comes whether, in fact the Panchas were informed that those who want to cast their votes in favour of motion should affix the mark of (✓) and also those who want to cast their votes in favour of the motion should indicate their intention by affixing the mark of 'X' or infact the Panchas were informed that those who wants to caste their votes in favour of the motion, they should affix the mark of (✓) on the ballot paper and those who want to cast their votes against the motion, they should affix mark on the ballot paper as 'X'. From the reading of whole record of proceedings, show that in fact the presiding officer apprised the Panchas that those who want to cast their votes in favour of motion should mark (✓) and those who want to cast their votes against the motion should mark 'X' and reasons for arriving at this conclusion are that;

1. Had the presiding officer informed the Panchas to mark both (✓) and 'X' in case they want to cast their votes in favour of motion, then at very moment the Panchas ought to have raised the objection that how such a procedure can be adopted and proceedings show that there was no such objection when the Naib Tehsildar informed the petitioner and other Panchas regarding manner of casting of their votes.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. The petitioner participated in the meeting, he himself affixed mark and he had not raised any objection regarding the point raised by the petitioner herein.

3. Moreover, when the ballot papers were taken on 9 ballot papers there was marking of (✓) and two ballot papers were marked with 'X' and on the 3rd one the marking was little bit confusing and the ballot papers were segregated in such a manner that those who had marked (✓) were considered in favour of motion and those who have marked 'X' were considered against the motion and that has been done with the spirit of sub-rule (5) of Rule 5, therefore, the petitioner has not been able to establish the ground, which has been raised in the petition that in fact the Presiding Officer informed the Panchas and him that those who want to cast their votes in favour of motion, they shall indicate their intention by marking (✓) and those who want to cast their votes in favour of motion, they shall also indicate their intention by marking 'X'.

So for all reasons, by slip pen while writing proceedings the mistake has been crept-in and instead of writing the word *'Vipaksh'* in respect of marking 'X', inadvertently with the slip of pen the word " *Paksh* " has been written. Therefore, the arguments advanced by learned counsel for the petitioner, in the first instance, appears to be

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attractive and plausible, but when it put to scrutiny the same is found to be without merit and basis.

Therefore, all the three points raised by the petitioner are not sufficient, justified and reasonable for setting aside the finding of the Prescribed Authority whereby he held that the motion was carried out and also the order of Additional Collector, who rejected the reference.

In the result, I do not find any ground in this petition, which requires interference by this Court under Article 227 of the Constitution of India in the order impugned, same is liable to be dismissed and it is accordingly dismissed.

Consequently, M.(W.)P. No.2432/06 & I.A. No.6264/06 also stand disposed of.

Sd/-
L.C.Bhadoo
Judge

Roshan/-